

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

ROBERT HOFFMAN,
#181813,

Plaintiff,

Civil Action No. 18-CV-11908

vs.

HON. BERNARD A. FRIEDMAN

TERESA KIK,

Defendant.

_____ /

**ORDER ACCEPTING MAGISTRATE JUDGE’S REPORT AND RECOMMENDATION,
GRANTING PLAINTIFF’S MOTIONS FOR LEAVE TO AMEND, AND
DENYING DEFENDANT’S MOTIONS TO DISMISS**

This matter is presently before the Court on Magistrate Judge Mona Majzoub’s Report and Recommendation (“R&R”), in which she recommends that the Court grant plaintiff’s motions for leave to amend the complaint and deny defendant’s motions to dismiss. Defendant has filed objections to the R&R. Pursuant to Fed. R. Civ. P. 72(b)(3), the Court “must determine de novo any part of the magistrate judge’s disposition that has been properly objected to.”

Defendant does not object to the magistrate judge’s recommendation that plaintiff’s first motion for leave to amend (docket entry 13) should be granted and that defendant’s first motion to dismiss (docket entry 10) should be denied as moot. The Court agrees with the magistrate judge’s analysis and conclusion as to these motions.

Defendant objects to the magistrate judge’s recommendation that plaintiff’s second motion for leave to amend (docket entry 20) should be granted and that defendant’s second motion to dismiss (docket entry 17) should be denied. Defendant argues that she is entitled to qualified immunity and therefore another amendment to the complaint would be futile and defendant is

entitled to dismissal. The Court agrees with the magistrate judge. Leave to amend is granted liberally, and for the reasons explained at pages 7-15 of the R&R, plaintiff's allegations suffice to state a retaliation claim. Whether defendant is entitled to qualified immunity remains to be seen. As the magistrate notes, defendant's second motion to dismiss (which was filed before plaintiff sought leave to file a second amended complaint) does not address all of plaintiff's additional allegations and is directed at a now superseded complaint. The procedurally correct course of action for defendant to take is to file a motion to dismiss or for summary judgment raising the qualified immunity defense and tailoring her argument to the facts alleged in plaintiff's second amended complaint. Accordingly,

IT IS ORDERED that Magistrate Majzoub's R&R is hereby accepted and adopted as the findings and conclusions of the Court.

IT IS FURTHER ORDERED that defendant's objections to the R&R are overruled.

IT IS FURTHER ORDERED that plaintiff's first motion for leave to amend (docket entry 13) is granted.

IT IS FURTHER ORDERED that defendant's first motion to dismiss (docket entry 10) is denied as moot.

IT IS FURTHER ORDERED that plaintiff's second motion for leave to amend

(docket entry 20) is granted and the second amended complaint (docket entry 21) is the operative complaint.

IT IS FURTHER ORDERED that defendant's second motion to dismiss (docket entry 17) is denied as moot, as it is not directed specifically to the second amended complaint.

Dated: August 29, 2019
Detroit, Michigan

s/Bernard A. Friedman
BERNARD A. FRIEDMAN
SENIOR UNITED STATES DISTRICT JUDGE

CERTIFICATE OF SERVICE

The undersigned certifies that a copy of the foregoing order was served upon each attorney or party of record herein by electronic means or first class U.S. mail on August 29, 2019.

Robert Hoffman, 181813
Parnall Correctional Facility - SMT
1780 E Parnall Rd
Jackson, MI 49201-7136

s/Johnetta M. Curry-Williams
Case Manager